IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.492 OF 2005

IN

SUIT NO.3237 OF 2004

Bahujan Samaj Party and another. ... Plaintiffs.

vs.

Jagran Prakashan Ltd. & others. .... Defendants.

Mr.Zaffair Nair with Ashok Singh i/b. Ms.A.V.Latne, for Plaintiffs.

Mr.Gabriel Pillai, for Defendants in support.

CORAM: D.K.DESHMUKH,J.

DATED: 17th March,, 2006

P.C.:-

1. This is a notice of motion taken out by the defendants under Order 7 Rule 11 of the Civil Procedure Code for dismissal of the suit on the ground that the suit does not disclose cause of action and that this Court does not have territorial jurisdiction to entertain the suit. The settled Law is that while considering the notice of motion under Order 7 Rule 11 of the Civil Procedure Code the Court has to go

by the averments made in the plaint.If there are averments made in the plaint showing that the cause of action has accrued to the plaintiff within the territorial jurisdiction of this Court, then the suit cannot be dismissed under Order 7 Rule 11 of the Civil Procedure Code. Similarly, if there are averments in the plaint showing that the plaintiffs have cause of action against the defendants then under Order 7 Rule 11 of the Civil Procedure Code, the plaint cannot be rejected. At the stage of Order 7 Rule 11 of C.P.C. the plaintiffs are under no obligation to prove the averments that are made in the plaint. That stage will come subsequently.

2. In so far as the present suit is concerned, admittedly, the defendants are the publishers of newspaper where the statement was made in relation to the leader of the plaintiffs-political party. That allegations made against the leader of the plaintiff-political party was found even by the defendants to be improper. Therefore, it cannot be said that the plaint does not disclose any cause of action. There is clear averments made in the plaint that though the newspaper is published in Noida, State of Udder Pradesh, the copies of the newspaper were distributed in the State of Maharashtra specially in Bombay. Therefore, this averment shows that the cause of action for filing suit for defamation has accrued to the plaintiffs even in Bombay. The plaintiffs at this stage are not required to prove averments made by

them in the plaint. It is thus clear that the averments in the plaint and the documents filed in the plaint show that the plaintiffs have disclosed the cause of action and have also made averments that the cause of action has accrued within a territorial jurisdiction of this Court. It is thus clear that the notice of motion is totally misconceived. Therefore, the notice of motion is disposed of. The defendant to pay cost of this notice of motion Rs.5000/- to the plaintiffs.